

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Metcalfe Application No.: 10/821,041 Filed: 4/8/2004 Title: Method and Apparatus for Controlling Pests Attorney Docket No.: 50180 Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Art Unit: 3643 Examiner: Ark RECEIVED CENTRAL FAX CENTER DEC 06 2006
---	--

RESPONSE TO OFFICE ACTION

MADE FINAL

MAILED 11-29-06

Dear Sir:

In response to the Office Action of June 21, 2006, please amend this application as follows:

In the claims:

Please amend the claims as per the attached claim amendment sheet.

REMARKS

Applicant respectfully submits that the finality of the Office Action mailed 11-29-06 was premature, and requests that the finality be rescinded, especially in light of the below.

(1) Technically, rejection of claims 38 and 39 under §112 had not been made previously and was not caused by an amendment in the prior response.

(2) Importantly, rejection of claims 23-30 was "provisional" under obviousness-type double patenting. Applicant submits that it was premature to make that provisional rejection final. The claims to which it applies are not known. Some claims were not otherwise rejected.

The attached papers, evidencing a request to correct inventorship in application in 09/736,023, indicate that the instant application is a proper continuation of co-pending application 09/736,023.

Further, in regard to the issue of obviousness-type double patenting, the Examiner will shortly be in position to ascertain the claims issuing in application number 09/736,023, as a request to issue the allowed claims will accompany the request to correct inventorship in that application. Further, an assignment of that application to the assignee of the instant application will also be filed. Hence, a terminal disclaimer will be able to be filed in the instant case.

In response to the claim rejections under §112: (1) applicant provisionally cancels claims 37-39 herein, provisional upon the amended claims being deemed allowable. Although applicant does not agree that claims 37-39 lack enablement or fail to meet the written description requirement, these

S:\Documents and Settings\Sue Shaper\My Documents\Shaper\BainSmith\50180 ROA 11-29-2006.doc

OK TO ENTER
DWA 1/03/2006